IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4438 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJKOT MUNICIPAL CORPORATION - Petitioner(s)

Versus

ANSUYABEN V PANDYA - Respondent(s)

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Appearance :

MR G RAMAKRISHNAN for MR BP TANNA for Petitioner No(s).: 1.

NOTICE SERVED for Respondent No(s).: 1.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 11/08/2005

ORAL JUDGMENT

1.0 The petitioner Corporation has challenged the order dated 27.02.1992 passed by the Appellate Authority under

the Payment of Gratuity Act, 1972 in Gratuity Appeal No. 13 of 1990, whereby the said Appeal was dismissed.

2.0 The brief facts of the case are that the respondent herein is a retired employee of the petitioner Corporation. While the respondent was in service, she raised a dispute regarding her birth date and filed a suit being Civil Suit No. 599 of 1982 before the Court of the learned Civil Judge, Rajkot. It was the case of the respondent therein that she was due to retire on 31.05.1985, as against 31.05.1982, claimed by the petitioner Corporation.

2.1 The Civil Court passed interim order by which the respondent was permitted to continue in service. In view of the said interim order, the respondent was continued in service even after 31.05.1982. It is the case of the petitioner that the respondent had already withdrawn the amount of Gratuity that was due to her as on 31.05.1982.

2.2 Being aggrieved by the said interim order, the respondent preferred Civil Appeal No. 9 of 1983 and in that Appeal the interim order against her retirement was ordered to be continued. However, ultimately, the said

Civil Suit came to be decided against the respondent and in favour of the petitioner.

2.3 It is the case of the respondent that since she had worked up to 31.05.1985, she is entitled for Gratuity up to that period. Therefore, the respondent preferred an application being Gratuity Application No. 90 of 1989 before the Controlling Authority under the Payment of Gratuity Act which came to be allowed. Against the said order, the petitioner herein preferred an appeal being Gratuity Appeal No. 13 of 1990, whereby the Appellate Authority vide impugned order dismissed the said appeal and directed the petitioner to pay an amount of Rs.8,473.50 to the respondent towards Gratuity. Hence, this petition.

3.0 Mr. G Ramakrishnan learned advocate for the petitioner has contended that on account of the interim order of the Civil Court, the respondent was continued in service till 31.05.1985 instead of 31.05.1982. He has submitted that once the respondent had lost the civil suit in question, she cannot take benefit of the said period.

3.1 Mr. Ramakrishnan has further submitted that the Appellate Authority under the Payment of Gratuity Act has not considered the aforesaid aspect of the matter and has dismissed the appeal only on the ground that Gratuity should be paid as per the last drawn pay at the time of retirement. He has, therefore, submitted that the impugned order of the Appellate Authority is illegal and perverse and deserves to be quashed and set aside.

4.0 I have heard learned counsel for the petitioner and perused the documents placed on record. Though served none appears on behalf of the respondent. The contention raised by the learned advocate for the petitioner is required to be accepted in view of the fact that the civil suit in question filed by the respondent herein was dismissed. It be noted that since the subject matter of the said civil suit was with regard to the correct date of retirement and once it was decided against the respondent herein, the respondent cannot be said to be entitled for Gratuity for the said period, i.e from 31.05.1982 to 31.05.1985.

4.1 In my opinion, the Appellate Authority under the Payment of Gratuity Act has committed serious error by

concluding that Gratuity should be paid as per the last drawn pay of the employee at the time of retirement. Hence, the impugned order of the Appellate Authority is required to be quashed and set aside.

5.0 In above view of the matter, this petition is allowed. The impugned order of the Appellate Authority under the Payment of Gratuity Act is quashed and set aside and the respondent workman cannot be said to be entitled for the said amount of Gratuity as directed by the Appellate Authority for the period from 31.05.1982 to 31.05.1985. However, it is observed that since the respondent has worked up to 31.05.1985, the petitioner Corporation shall not effect any recovery as regards the salary that has already been made, in view of the fact that the decision of the Civil Court has achieved finality. With the above observations, the petition stands disposed of. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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